

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN D. CROSS,

Defendant.

ORDER

08-cv-370-bbc

07-cr-130-bbc

Defendant Brian Cross filed a motion for post conviction relief under 28 U.S.C. § 2255, asserting three grounds for relief. In an order signed on August 28, 2008, I dismissed his first two claims and allowed him to go forward on his third claim, which was that he was denied his right to appeal when he asked his counsel to take an appeal and his counsel failed to do so. (I noted that this allegation did not seem to jibe with the fact that counsel had filed an appeal for defendant, but had later withdrawn it.)

Now the government has moved for reconsideration of the August 28 order, advising the court that the Court of Appeals for the Seventh Circuit has denied defendant's motion to dismiss his appeal until and unless defendant gives signed consent to the request for

dismissal. In light of the fact that defendant has a full opportunity to appeal from his sentence, I will dismiss his § 2255 motion in all respects.

ORDER

IT IS ORDERED that defendant Brian Cross's motion for relief from his conviction and sentence under 28 U.S.C. § 2255 is DENIED. FURTHER, IT IS ORDERED that the Federal Defender is relieved of its obligation to appoint new counsel for defendant to represent him on a post conviction motion.

Entered this 9th day of September, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge